

(1905) 03 CAL CK 0002
In the Calcutta High Court
Case No : Appeal No. 2294 of 1902

Hari Sankar Dutt

APPELLANT

Vs

Kali Kumar Patra on his death brojendra k. Patra and others

RESPONDENT

Date of Decision : 09-03-1905

Acts Referred:

Citation : (1905) 03 CAL CK 0002

Judgement

1. The present appeal arises out of a suit brought by the Plaintiff alleging that he was in possession of a certain jungle and that the Defendants had interfered with his possession by cutting certain trees from it. He sought in the suit a declaration of his title to the whole jungle and damages for the trees which the Defendants had cut from it and an injunction restraining the Defendants from cutting any more trees. He valued the trees cut at Rs. 79 and the relief otherwise claimed at Rs. 130. He, therefore, valued the whole suit at Rs. 209.

2. The Defendants raised the objection that the suit was undervalued; and the Munsif appointed a Commissioner to ascertain what the value of the jungle, of which the Plaintiff claimed to be in possession, was. The Commissioner reported the value to be over Rs. 1,000 but the Munsif being of opinion that the Commissioner had been misled by the Defendants, formed his own estimate of the value, and came to the conclusion that it was not in excess of the value stated by the Plaintiff in his plaint. It is to be observed that the Plaintiff objected to any valuation being made, on the ground that the valuation which he had given in his plaint was sufficient for the purposes of jurisdiction.

3. The Munsif proceeded after trying the preliminary point to decide the case, and gave the Plaintiff a decree for the relief claimed.

4. On appeal, the Subordinate Judge has set aside the judgment and decree of the Munsif on the ground that the Munsif had no jurisdiction to entertain the suit. He lays down the proposition that in a case like the present, the value of the suit for the purposes of jurisdiction is to be determined as if possession of the whole property were sought : and, making an estimate of the profits to be derived from

the jungle, he arrives at the conclusion that the market value of the jungle was over Rs. 1,200 and accordingly he held that the value of the suit taking the amount claimed as damages also into consideration was Rs. 1,279. He accordingly decreed the appeal, and directed that the plaint be returned to the Plaintiff with directions to present it to the proper Court after amendment of its value.

5. The Plaintiff has appealed; and, in support of his appeal it is contended that the Subordinate Judge has erred in law in the view which he has taken of the question as to how the value of the property was to be determined for the purposes of jurisdiction. It is contended that the present suit is one which clearly falls under paragraph IV sec. 7, cls. (c) and (d) of the Court Act (VII of 1870). That section provides that in such a suit the value for the purposes of Court-fees is to be determined according to the amount at which the relief as sought is valued in the plaint or the memorandum of appeal.

6. In this case the Plaintiff claimed to have been in possession of the whole of the jungle in question, and the relief which he sought was not delivery of possession of the jungle but merely a declaration of his title and an injunction to prevent an interference with his possession, and damages for the wood taken from the jungle : and he valued the relief sought at Rs. 209. It is contended that under the provisions of sec. 8 of the Suits Valuation Act (VII of 1887), the value for the purposes of jurisdiction should have been taken to be the same as the value for the purposes of determining the Court-fees.

7. We have read the two sections carefully, and, in our opinion, the present case falls clearly within those two sections.

8. The learned vakil has referred us to certain cases in the Bombay, Allahabad and Madras High Courts in which it has been distinctly laid down that in a case like the present, the valuation for the purposes of jurisdiction is to be determined by the value of the relief stated by the Plaintiff, and that it is no part of the duty of the Court to ascertain the value for the purposes of jurisdiction. The cases referred to are *Sardar Singji v. Ganpat Singji* ILR 17 Bom. 56(1892), *Bai Varunda v. Bai Manegavri* ILR 18 Bom. 207 (1893), *Golab Dai v. Jiwane Rant* ILR 2 All. 320 (1879), *Sheo Deni Ram v. Tulshi Ram* ILR 15 All. 378 (1893) and *Velu Goundan v. Kumara Velu Goundan* ILR 20 Mad. 289 (1896). These authorities certainly support the view for which the learned vakil has contended.

9. On behalf of the Respondent, it has been urged that the view taken by the Subordinate Judge is correct and that for the purposes of jurisdiction the value of the property ought to have been ascertained as if possession were sought in the case : and, in support of this view, the rulings of this Court in *Kirty Churn v. Anauth Nath* ILR 8 Cal. 757 (1882) and *Baidyanath v. Makhan Lal* ILR 17 Cal. 680(1890) have been relied on.

10. We have referred to those cases, and, in our opinion, they do not support the proposition contended for. The suits dealt with in those cases were suits for partition of property; and, in those cases, it was laid down that such suits do not

fall within the provisions of sec. 7, paragraph IV, cl. (b) of the Court Fees Act and that therefore the provisions of sec. 8 of the Suits Valuation Act do not apply to them. It was held that for the purposes of the Court Fees Act, the Court-fee to be paid was determined by Sen. II, Art. 17, cl. (b) of the Court Fees Act, and that for the purpose of jurisdiction, the Court should ascertain the value of the property to be dealt with by the Court in partition that is to say, the market value of the property.

11. Those two cases are, however, clearly distinguishable from the present which in our opinion, clearly falls within the provisions of paragraph IV, cls. (c) and (d) of sec. 7 of the Court Fees Act. We see no reason to differ from the view taken by the High Courts of Bombay, Madras and Allahabad that in a case like the present it is not the duty, nor is it within the power, of the Court to ascertain the value of the property for the purposes of jurisdiction, but that it should accept the value of the relief stated in the plaint. In our opinion, the Court in such cases should accept the value of the relief sought by the Plaintiff, both for the purposes of the Court-fees as well as for the purpose of determining the jurisdiction of the Court to try the suit.

12. We think, therefore, that the view-taken by the learned Subordinate Judge is incorrect. We set aside his judgment and decree and direct that the appeal be remanded to him for retrial on the merits. The Appellant in this case will recover the value of the Court-fee paid by him on the memorandum of appeal to this Court, and is entitled as against the Respondents to his other costs in this Court. The costs in the lower Courts will abide the result.